

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

SPENCER NEAL,

Plaintiff,

vs.

PORTS PETROLEUM COMPANY, INC.,

d/b/a Gas Mart 764,

a/k/a Fuel Mart #764,

Defendant.

CASE NO.: \_\_\_\_\_

JUDGE \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES:**

**1ST CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of the Americans with Disability  
Act of 1990 ("Title III" and "ADA"),  
42 U.S.C. §§ 12181 *et seq.*

**2ND CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of Ohio Revised Code 4112.02, *et  
seq.*

**3RD CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of Ohio Administrative Code  
4101:1-11, *et seq.*

Plaintiff SPENCER NEAL Complains of Defendant PORTS PETROLEUM  
COMPANY, INC., d/b/a GAS MART 764, a/k/a FUEL MART #764, and alleges as follows:

**INTRODUCTION:**

1. This is a civil rights action for discrimination against persons with physical disabilities, of which plaintiff is a member of, for failure to remove architectural barriers structural in nature at Defendant's property, a place of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et*

1 *seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

2         2.         Plaintiff SPENCER NEAL is a person with physical disabilities who, on or about  
3 July 10, 2019, was an invitee, guest, patron, or customer at Defendant's property, which houses a  
4 FUEL MART gas station and convenience store, located at 404 North Urbana Street, South  
5 Vienna, Ohio 45369. At said time and place, Defendant failed to provide proper legal access to  
6 the property, which is a public accommodation and/or public facility. The denial of access was in  
7 violation of both federal and Ohio legal requirements, and NEAL suffered violations of his civil  
8 rights to full and equal access and was embarrassed and humiliated.  
9

10 **JURISDICTION AND VENUE:**  
11

12         3.         **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
13 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
14 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
15 nucleus of operative facts and arising out of the same transactions, are also brought under  
16 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to  
17 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,  
18 *et sec.*  
19

20         4.         **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
21 founded on the facts that the real property which is the subject of this action is located in this  
22 district, in the City of South Vienna, County of Clark, State of Ohio and that plaintiffs' causes of  
23 action arose in this district.  
24

25  
26 **PARTIES:**

27         5.         Plaintiff SPENCER NEAL is a "physically handicapped person," a "physically  
28

1 disabled person,” and a “person with physical disabilities.” (Hereinafter the terms “physically  
2 disabled,” “physically handicapped” and “person with physical disabilities” are used  
3 interchangeably, as these words have similar or identical common usage and legal meaning.)  
4 NEAL is a “person with physical disabilities,” as defined by all applicable Ohio and United  
5 States laws. NEAL requires the use of a wheelchair to travel about in public. Consequently,  
6 NEAL is a member of that portion of the public whose rights are protected by the provisions of  
7 Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code § 4101:1-11, *et sec.*  
8

9         6. Defendant PORTS PETROLEUM COMPANY, INC., D/B/A GAS MART 764,  
10 A/K/A FUEL MART #764, an Ohio corporation, is the owner and operator, lessor and/or lessee,  
11 or agent of the owner, lessor and/or lessee, of the building and/or buildings which constitute a  
12 public facility in and of itself, occupied by the FUEL MART gas station and convenience store, a  
13 public accommodation, located at/near 404 North Urbana Street, South Vienna, Ohio 45369, and  
14 subject to the requirements of Ohio state law requiring full and equal access to public facilities  
15 pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio Administrative Code § 4101:1-11, *et*  
16 *sec.*, and subject to the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”), 42.  
17 U.S.C. §§ 12181 *et seq.*, and to all other legal requirements referred to in this complaint.  
18

19         7. At all times relevant to this complaint, Defendant is the lessee, or agent of the  
20 lessee, and/or lessor, of said premises, and owns and operates the subject FUEL MART gas  
21 station and convenience store as a public facility at/near 404 North Urbana Street, South Vienna,  
22 Ohio 45369. The business, a FUEL MART gas station and convenience store, is open to the  
23 general public and conducts business therein. The business operating on said premises is a public  
24 accommodation subject to the requirements of Ohio Revised Code § 4112.02, *et seq.* and Ohio  
25 Administrative Code § 4101:1-11, *et sec.*  
26  
27  
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1           8. At all times relevant to this complaint, Defendant is the landlords/lessors,  
2 tenants/lessees and the owners and operators of the subject facility, a public accommodation  
3 located at/near 404 North Urbana Street, South Vienna, Ohio 45369. As such, Defendant is  
4 jointly and severally responsible to identify and remove architectural barriers pursuant to Code  
5 of Federal Regulations section 36.201(b), which states in pertinent part:  
6

7           **§ 36.201       General**

8                       (b) Landlord and tenant responsibilities. Both the landlord  
9 who owns the building that houses a place of public  
10 accommodation and the tenant who owns or operates the place of  
11 public accommodation are public accommodations subject to the  
12 requirements of this part. As between the parties, allocation of  
responsibility for complying with the obligations of this part may  
be determined by lease or other contract.

13                      CFR §36.201(b)

14           9. Plaintiff does not know the true names of Defendant, its business capacities, its  
15 ownership connection to the property and business, nor their relative responsibilities in causing  
16 the access violations herein complained of. Plaintiff is informed and believes that the Defendant  
17 herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer,  
18 employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity,  
19 of each of the other defendants, if any, and was at all times acting and performing, or failing to  
20 act or perform, within the course and scope of his, her or its authority as agent, ostensible agent,  
21 master, servant, employer, employee, representative, franchiser, franchisee, partner, and  
22 associate, or such similar capacity, and with the authorization, consent, permission or ratification  
23 of each of the other defendants, and is responsible in some manner for the acts and omissions of  
24 the other defendants in legally causing the violations and damages complained of herein, and  
25 have approved or ratified each of the acts or omissions of each other defendant, as herein  
26  
27  
28

described.

**PRELIMINARY FACTUAL ALLEGATIONS:**

10. Defendant is the entity that is a public accommodation that owns, leases (or leases to), or operates a, FUEL MART gas station and convenience store, located at 404 North Urbana Street, South Vienna, Ohio 45369. FUEL MART gas station and convenience store and each of its facilities are places “of public accommodation” subject to the requirements of the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.* On information and belief, said facility has undergone “alterations, structural repairs and additions,” each of which has subjected the FUEL MART gas station and convenience store to handicapped access requirements.

11. Plaintiff SPENCER NEAL is a person with a disability. NEAL is a “physically disabled person,” as defined by all applicable Ohio and United States laws. NEAL is paralyzed as a result of spina bifida and requires the use of a wheelchair for mobility and to travel in public.

12. At all times referred to herein and continuing to the present time, Defendant advertised, publicized and held out the FUEL MART gas station and convenience store as being handicapped accessible and handicapped usable.

13. On or about July 10, 2019, NEAL was an invitee and guest at the subject FUEL MART gas station and convenience store, arriving for purposes of obtaining a beverage.

14. Upon his arrival, during his patronizing of the public accommodation, and upon his exit of the facility, NEAL personally encountered architectural barriers which denied him the full and equal access to the property.

1           15. Therefore, at said time and place, NEAL, who is a person with disabilities,  
 2 encountered the following inaccessible elements of the subject FUEL MART gas station and  
 3 convenience store which constituted architectural barriers and a denial of the proper and legally  
 4 required access to a public accommodation to persons with physical disabilities. By way of  
 5 example and not as an exhaustive inventory of Defendant's violations, the following barriers to  
 6 access were personally encountered by plaintiffs:  
 7

- 8           a. *In the parking lot, there are no van accessible parking stalls in violation of 2010 ADAS*  
 9           *Section: 208.2, 208.2.4.*
- 10          b. *In the parking lot, the stripe is missing at the right side of the right parking stall which*  
 11          *identifies its border in violation of 2010 ADAS Section: 502.2 and 2003 ANSI A117.1*  
 12          *Section: 502.2.*
- 13          c. *In the parking lot, the parking stall contains abrupt edges and surface irregularities over*  
 14          *a 1/4 inch vertical in violation of 2010 ADAS Section: 502.4, 2003 ANSI A117.1 Section:*  
 15          *502.5 and 1991 ADAS Section: 4.6.3.*
- 16          d. *In the parking lot, the required parking signage is missing in violation of 2010 ADAS*  
 17          *Section: 502.6 and 2003 ANSI A117.1 Section: 502.7.*
- 18          e. *In the parking lot, the van stall is missing a sign identifying it as a van accessible stall in*  
 19          *violation of 2010 ADAS Section: 502.6, 2003 ANSI A117.1 Section: 502.7 and 1991*  
 20          *ADAS Section: 4.6.4.*
- 21          f. *In the parking lot, the access aisle is missing and is not a minimum 8 feet to the*  
 22          *centerline of the stripe in violation of 2010 ADAS Section: 502.2 Exception, 2003 ANSI*  
 23          *A117.1 Section: 502.2 Exception and 1991 ADAS Section: 4.1.2(1).*
- 24          g. *In the parking lot, the access aisle is missing and the parking does not connect to an*  
 25          *accessible route of travel to the accessible building entrance in violation of 2010 ADAS*  
 26          *Section: 208.3.1, 502.3 and 1991 ADAS Section: 4.6.3.*
- 27          h. *At the exterior accessible route, there is no accessible route to the sidewalk patio area*  
 28          *and picnic tables in violation of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section:*  
 29          *4.1.2(1).*
- 30          i. *At the exterior accessible route, the walkway contains abrupt vertical edges and/or*  
 31          *variations over a 1/4 inch in violation of 2010 ADAS Section: 303.3, 303.2, 2003 ANSI*  
 32          *A117.1 Section: 303.2, 303.3 and 1991 ADAS Section: 4.5.2.*

- 1 j. *At the exterior accessible route, there is no accessible route to the ice boxes in violation*  
2 *of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section: 4.1.2(1).*
- 3 k. *At the exterior accessible route, there is no accessible route to the air machine in*  
4 *violation of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section: 4.1.2(1).*
- 5 l. *At the exterior accessible route, there is no accessible route to the washer fluid display in*  
6 *violation of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section: 4.1.2(1).*
- 7 m. *At the exterior accessible route, there is no accessible route to the propane tank vending*  
8 *in violation of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section: 4.1.2(1).*
- 9 n. *At the entrance, the ramp projects into a prohibited area in violation of 2010 ADAS*  
10 *Section: 406.5, 2003 ANSI A117.1 Section: 406.6 and 1991 ADAS Section: 4.7.6.*
- 11 o. *At the entrance, the returned curbs or other well-defined edges are not directional in*  
12 *violation of 2010 ADAS Section: 406.6, 2003 ANSI A117.1 Section: 406.10 and 1991*  
13 *ADAS Section: 4.7.10.*
- 14 p. *At the entrance, the curb ramp on the accessible route contains cross slopes greater than*  
15 *2% in violation of 2010 ADAS Section: 405.3, 2003 ANSI A117.1 Section: 405.3 and*  
16 *1991 ADAS Section: 4.3.7.*
- 17 q. *At the entrance, the transition from the curb ramp to the walk, gutter or street is not flush*  
18 *and free of abrupt changes in level in violation of 2010 ADAS Section: 406.2, 2003 ANSI*  
19 *A117.1 Section: 406.2 and 1991 ADAS Section: 4.7.2.*
- 20 r. *At the entrance, the landing at the entrance ramp contains abrupt vertical edges and/or*  
21 *variations over a 1/4 inch in violation of 2010 ADAS Section: 303.3, 303.2, 2003 ANSI*  
22 *A117.1 Section: 303.2, 303.3 and 1991 ADAS Section: 4.5.2.*
- 23 s. *At the entrance, the door opening contains projections into the required clear space in*  
24 *violation of 2010 ADAS Section: 404.2.3.*
- 25 t. *At the entrance, the doormats are not secured in place at the entry doors in violation of*  
26 *2010 ADAS Section: 302.2, 2003 ANSI A117.1 Section: 302.1 and 1991 ADAS Section:*  
27 *4.5.3.*
- 28 u. *In the restroom, the toilet paper dispenser is mounted too close to the top of the side grab*  
*bar, minimizing the gripping surface in violation of 2010 ADAS Section: 609.3 and 2003*  
*ANSI A117.1 Section: 609.3.*
- v. *In the restroom, the toilet paper is not installed within the compliant range in violation of*  
*2010 ADAS Section: 604.7.*

- 1 w. *In the restroom, the flush handle is located on the wrong side of the toilet in violation of*  
2 *2010 ADAS Section: 604.6 and 2003 ANSI A117.1 Section: 604.6.*
- 3 x. *In the restroom, the toilet seat cover dispenser is mounted too close to the top of the grab*  
4 *bar, minimizing the gripping surface in violation of 2010 ADAS Section: 609.3 and 2003*  
5 *ANSI A117.1 Section: 609.3.*
- 6 y. *In the restroom, the rear grab bar does not extend adequately past the toilet on the wide*  
7 *side in violation of 2010 ADAS Section: 604.5.2, 2003 ANSI A117.1 Section: 604.5.2 and*  
8 *1991 ADAS Section: 4.17.6.*
- 9 z. *In the restroom, the side grab bar does not extend far enough from the rear wall in*  
10 *violation of 2010 ADAS Section: 604.5.1, 2003 ANSI A117.1 Section: 604.5.1 and 1991*  
11 *ADAS Section: 4.17.6.*
- 12 aa. *In the restroom, the required 56 inches by 60 inches clear floor space for the water closet*  
13 *has been obstructed by the trash can in violation of 2010 ADAS Section: 604.3.1 and*  
14 *1991 ADAS Section: 4.16.2.*
- 15 bb. *In the restroom, the paper towel and soap dispensers are not accessible because there is*  
16 *not adequate clear floor space for either a forward or side approach in violation of 2010*  
17 *ADAS Section: 305.3, 2003 ANSI A117.1 Section: 305.3 and 1991 ADAS Section:*  
18 *4.2.4.1.*
- 19 cc. *In the restroom, the paper towel dispenser is not accessible because there is not adequate*  
20 *clear floor space for either a forward or side approach in violation of 2010 ADAS*  
21 *Section: 305.3, 2003 ANSI A117.1 Section: 305.3 and 1991 ADAS Section: 4.2.4.1.*
- 22 dd. *In the restroom, the mirror is mounted too high in violation of 2010 ADAS Section: 603.3*  
23 *and 2003 ANSI A117.1 Section: 1003.11.6.*
- 24 ee. *At the sales and vending, the hot dog machine is not accessible because it is located over*  
25 *an obstruction greater than 34 inches tall in violation of 2010 ADAS Section: 308.3.2 and*  
26 *1991 ADAS Section: 4.2.6.*
- 27 ff. *At the sales and vending, the hot dog machine is too high and is out of the maximum*  
28 *reach range for a side approach in violation of 2010 ADAS Section: 308.3.2 and 1991*  
*ADAS Section: 4.2.6.*
- gg. *At the sales and vending, the fountain dispensers are too high and out of the maximum*  
*reach range for a side approach in violation of 2010 ADAS Section: 308.3.2.*
- hh. *At the fuel dispenser, the clear floor space required at the paper towel dispensers has a*  
*change in elevation in violation of 2010 ADAS Section: 305.2 and 1991 ADAS Section:*  
*4.5.2.*



- 1       ii. *At the fuel dispenser, the paper towel dispensers are too high and out of the maximum*  
2       *reach range for a side approach in violation of 2010 ADAS Section: 308.3.2 and 1991*  
3       *ADAS Section: 4.2.6.*
- 4       jj. *At the fuel dispenser, the kerosene pump is not accessible because there is not adequate*  
5       *clear floor space for an approach. It is obstructed by the bollards and sign in violation of*  
6       *2010 ADAS Section: 305.3, 2003 ANSI A117.1 Section: 305.3 and 1991 ADAS Section:*  
7       *4.2.4.1.*

8       On personal knowledge, information and belief, other public facilities and elements too  
9       numerous to list were improperly inaccessible for use by persons with physical disabilities.

10       16. At all times stated herein, the existence of architectural barriers at Defendant's  
11       place of public accommodation evidenced "actual notice" of Defendant's intent not to comply  
12       with the Americans with Disability Act of 1990 ("title III" and "ADA"), 42. U.S.C. §§ 12181 *et*  
13       *seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*  
14       either then, now or in the future.

15       17. As a legal result of Defendant's failure to act as a reasonable and prudent public  
16       accommodation in identifying, removing or creating architectural barriers, policies, practices and  
17       procedures that denied access to plaintiff and other persons with disabilities, plaintiffs suffered  
18       damages as alleged herein.

19       18. As a further legal result of the actions and failure to act of Defendant, and as a  
20       legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
21       herein, NEAL was denied his civil rights to full and equal access to public facilities. NEAL  
22       suffered a loss of his civil rights and his rights as a person with physical disabilities to full and  
23       equal access to public facilities, and further suffered from personal injury, shame, humiliation,  
24       embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated  
25       with a person with physical disabilities being denied access, all to his damages as prayed  
26       hereinafter in an amount within the jurisdiction of this court.

1           19. On information and belief, construction alterations carried out by Defendant have  
2 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND  
3 “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio  
4 Administrative Code §4101:1-11, *et sec.*  
5

6           20. NEAL, as described herein below, seeks injunctive relief to require the  
7 FUEL MART to be made accessible to meet the requirements of both Ohio law and the  
8 Americans with Disabilities Act, whichever is more restrictive, so long as Defendant operates  
9 and/or leases the FUEL MART gas station and convenience store as a public facility. Plaintiff  
10 seeks damages for violation of his civil rights, from the date of his visit until such date as  
11 Defendant brings the establishment into full compliance with the requirements of Ohio and  
12 federal law.  
13

14           21. On information and belief, Defendant has been negligent in its affirmative duty  
15 to identify the architectural barriers complained of herein and negligent in the removal of some  
16 or all of said barriers.  
17

18           22. Because of Defendant’s violations, NEAL and other persons with physical  
19 disabilities are unable to use public facilities such as those owned and operated by Defendant on  
20 a “full and equal” basis unless such facility is in compliance with the provisions of the  
21 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an  
22 order from this court compelling Defendant to make the FUEL MART gas station and  
23 convenience store accessible to persons with disabilities.  
24

25           23. Plaintiff is informed and believes and therefore alleges that Defendant caused the  
26 subject property to be constructed, altered and/or maintained in such a manner that persons with  
27 physical disabilities were denied full and equal access to, within and throughout said facility of  
28

1 the FUEL MART gas station and convenience store and were denied full and equal use of said  
2 public facility. Further, on information and belief, Defendant has continued to maintain and  
3 operate said facility in such conditions up to the present time, despite actual and constructive  
4 notice to such Defendant that the configuration of the establishment and/or its building(s) are in  
5 violation of the civil rights of persons with physical disabilities, such as plaintiff and the  
6 disability community. Such construction, modification, ownership, operation, maintenance and  
7 practices of such public facilities are in violation of law as stated in Americans with Disability  
8 Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.* and elsewhere in the laws  
9 of Ohio.  
10

11  
12 24. On information and belief, the subject public facility of the FUEL MART gas station  
13 and convenience store denied full and equal access to plaintiff and other persons with physical  
14 disabilities in other respects due to noncompliance with requirements of Ohio Revised Code §  
15 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*  
16

17 25. On personal knowledge, information and belief, the basis of Defendant's actual  
18 and constructive notice that the physical configuration of the facilities including, but not limited  
19 to, architectural barriers constituting the FUEL MART gas station and convenience store was in  
20 violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but is  
21 not limited to, communications with invitees and guests, owners of other establishments and  
22 businesses, notices Defendant obtained from governmental agencies upon modification,  
23 improvement, or substantial repair of the subject premises and other properties owned by the  
24 Defendant, newspaper articles and trade publications regarding the Americans with Disabilities  
25 Act and other access laws, public service announcements, and other similar information.  
26 Defendant's failure, under state and federal law, to make the establishment accessible is further  
27

1 evidence of Defendant's conscious disregard for the rights of plaintiff and other similarly  
2 situated persons with disabilities. The scope and means of the knowledge of Defendant are  
3 within Defendant's exclusive control and cannot be ascertained except through discovery.  
4

5 26. Plaintiff will return to the subject FUEL MART gas station and convenience store to  
6 patronize the facility, if it is made fully accessible to a disabled person in a wheelchair, and to  
7 also avail himself of the facility's services; Plaintiff frequently travels to the Columbus area from  
8 Akron, Ohio and Fuel Mart is located in a convenient location for Neal's travels.

9 27. Furthermore, plaintiff intends to return to the FUEL MART gas station and  
10 convenience store as an ADA tester on an annual basis beginning in Fall 2020, to ascertain  
11 whether Defendant removed the barriers to access which are the subject of this litigation.  
12

13 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**  
14 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
15 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

16 28. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,  
17 the allegations contained in paragraphs 1 through 27 of this complaint.

18 29. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.  
19 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully  
20 protect:

21 some 43 million Americans with one or more physical or mental  
22 disabilities; [that] historically society has tended to isolate and  
23 segregate individuals with disabilities; [that] such forms of  
24 discrimination against individuals with disabilities continue to be a  
25 serious and pervasive social problem; [that] the nation's proper  
26 goals regarding individuals with disabilities are to assure equality  
27 of opportunity, full participation, independent living and economic  
28 self-sufficiency for such individuals; [and that] the continuing  
existence of unfair and unnecessary discrimination and prejudice  
denies people with disabilities the opportunity to compete on an  
equal basis and to pursue those opportunities for which our free  
society is justifiably famous.

1           30. Congress stated as its purpose in passing the Americans with Disabilities Act of  
2 1990 (42 U.S.C. §12102):

3                   It is the purpose of this act (1) to provide a clear and  
4 comprehensive national mandate for the elimination of  
5 discrimination against individuals with disabilities; (2) to provide  
6 clear, strong, consistent, enforceable standards addressing  
7 discrimination against individuals with disabilities; (3) to ensure  
8 that the Federal government plays a central role in enforcing the  
9 standards established in this act on behalf of individuals with  
10 disabilities; and (4) to invoke the sweep of Congressional  
11 authority, including the power to enforce the 14th Amendment and  
12 to regulate commerce, in order to address the major areas of  
13 discrimination faced day to day by people with disabilities.

14           31. As part of the Americans with Disabilities Act of 1990, (hereinafter the “ADA”),  
15 Congress passed “Title III - Public Accommodations and Services Operated by Private Entities”  
16 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for  
17 purposes of this title was:

18                   (7) PUBLIC ACCOMMODATION - The following private  
19 entities are considered public accommodations for purposes of this  
20 title, if the operations of such entities affect commerce -

21                   ...

22                   (B) \*\*\* other establishment serving food or drink;

23                   (E) \*\*\* other sales or rental establishment;

24                   (F) \*\*\*gas station \*\*\*.

25                   42 U.S.C. §12181(7)(B)(E).

26           32. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated  
27 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
28 privileges, advantages, or accommodations of any place of public accommodation by any person  
who owns, leases, or leases to, or operates a place of public accommodation.”

          33. The specific prohibitions against discrimination set forth in §302(b)(2)(a),

1 42 U.S.C. §12182(b)(2)(a) are:

2 (i) the imposition or application of eligibility criteria  
3 that screen out or tend to screen out an individual with a disability  
4 or any class of individuals with disabilities from fully and equally  
5 enjoying any goods, services, facilities, privileges, advantages, or  
6 accommodations, unless such criteria can be shown to be  
7 necessary for the provision of the goods, services, facilities,  
8 privileges, advantages, or accommodations being offered;

9 (ii) a failure to make reasonable modifications in  
10 policies, practices, or procedures, when such modifications are  
11 necessary to afford such goods, services, facilities, privileges,  
12 advantages or accommodations to individuals with disabilities,  
13 unless the entity can demonstrate that making such modifications  
14 would fundamentally alter the nature of such goods, services,  
15 facilities, privileges, advantages, or accommodations;

16 (iii) a failure to take such steps as may be necessary to  
17 ensure that no individual with a disability is excluded, denied  
18 services, segregated or otherwise treated differently than other  
19 individuals because of the absence of auxiliary aids and services,  
20 unless the entity can demonstrate that taking such steps would  
21 fundamentally alter the nature of the good, service, facility,  
22 privilege, advantage, or accommodation being offered or would  
23 result in an undue burden;

24 (iv) a failure to remove architectural barriers, and  
25 communication barriers that are structural in nature, in existing  
26 facilities . . . where such removal is readily achievable; and

27 (v) where an entity can demonstrate that the removal of  
28 a barrier under clause (iv) is not readily achievable, a failure to  
make such goods, services, facilities, privileges, advantages or  
accommodations available through alternative methods if such  
methods are readily achievable.

29 The acts of Defendant set forth herein were a violation of plaintiff's rights under the ADA, 42.

30 U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §  
31 4101:1-11, *et sec.*, making available damage remedies.

32 34. The removal of the barriers complained of by plaintiff as hereinabove alleged  
33 was at all times after January 26, 1992 "readily achievable" as to the subject FUEL MART gas  
34 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 14

1 station and convenience store pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information  
2 and belief, if the removal of all the barriers complained of herein together was not “readily  
3 achievable,” the removal of each individual barrier complained of herein was “readily  
4 achievable.” On information and belief, Defendant’s failure to remove said barriers was likewise  
5 due to discriminatory practices, procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-  
6 (iii); 42 U.S.C. §12182 (b)(2)(A)(i).

8 35. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily  
9 accomplishable and able to be carried out without much difficulty or expense.” The statute  
10 defines relative “expense” in part in relation to the total financial resources of the entities  
11 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that  
12 plaintiff complains of herein were and are “readily achievable” by the Defendant under the  
13 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not  
14 “readily achievable” for Defendant to remove each of such barriers, Defendant has failed to  
15 make the required services available through alternative methods which were readily achievable.  
16

18 36. On information and belief, construction work on, and modifications of, the  
19 subject FUEL MART gas station and convenience store occurred after the compliance date for  
20 the Americans with Disabilities Act, January 26, 1992, independently triggering access  
21 requirements under Title III of the ADA.

23 37. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
24 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil  
25 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on  
26 the basis of disability in violation of this title or has reasonable grounds for believing that he  
27 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make  
28

1 use of the public facilities complained of herein so long as the premises and Defendant's policies  
2 bar full and equal use by persons with physical disabilities.

3 38. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person  
4 with a disability to engage in a futile gesture if such person has actual notice that a person or  
5 organization covered by this title does not intend to comply with its provisions." Pursuant to this  
6 last section, plaintiff has not returned to Defendant's premises since on or about July 10, 2019,  
7 but alleges that Defendant has continued to violate the law and deny the rights of plaintiff and of  
8 other persons with physical disabilities to access this public accommodation. Pursuant to  
9 §308(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an  
10 order to alter facilities to make such facilities readily accessible to and usable by individuals with  
11 disabilities to the extent required by this title."  
12

13  
14 39. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights  
15 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement  
16 the Americans with Disabilities Act of 1990, including but not limited to an order granting  
17 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being  
18 deemed to be the prevailing party.  
19

20 40. Plaintiff seeks damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and Ohio  
21 Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that a  
22 violation of the ADA and/or Ohio's accessibility standards is a violation of Ohio law.  
23

24 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

25 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**  
26 **IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

27 41. Plaintiff repleads and incorporates by reference as if fully set forth again herein,  
28 the allegations contained in paragraphs 1 through 40 of this complaint.



1           42. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided  
2 that persons with physical disabilities are not to be discriminated against because of physical  
3 handicap or disability. This section provides that:

4                   It shall be an unlawful discriminatory practice:

5                   (G)   For any proprietor or any employee, keeper, or manager of a place of  
6 public accommodation to deny to any person, except for reasons  
7 applicable alike to all persons regardless of race, color, religion, sex,  
8 military status, national origin, disability, age, or ancestry, the full  
9 enjoyment of the accommodations, advantages, facilities, or privileges of  
the place of public accommodation.

10           43. FUEL MART gas station and convenience store is a “place of public accommodation”  
11 pursuant to Ohio Revised Code § 4112.01(A)(9).

12           44. Defendant committed an unlawful act pursuant to Ohio Revised Code §4112.02(G)  
13 by denying plaintiff the full enjoyment of its accommodations, advantages, facilities, or  
14 privileges, whereas, plaintiff had great difficulty due to extensive barriers for patrons confined to  
15 wheelchairs.

16           45. Pursuant to Ohio Revised Code § 4112.99, plaintiff is entitled to compensatory  
17 and punitive damages, and attorney fees and costs, in an amount to be determined at trial, but in  
18 any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to  
19 allow full and equal enjoyment of its goods, services, facilities, privileges, and advantages to  
20 disabled persons.

21           46. A separate act in violation of Ohio Revised Code § 4112.02(G) has been committed  
22 each day that Defendant acts or fail to act and/or knowingly and willfully fails and refuse to  
23 remove each architectural barrier or policy and procedure barrier presently existing at the subject  
24 public accommodation which denies full and equal access for persons with physical disabilities  
25 to said building(s), elements and facilities of FUEL MART gas station and convenience store.  
26  
27  
28

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 17

1 Plaintiff has been denied full and equal access on an ongoing basis since the date of his first visit.  
2 As a legal result, plaintiff is entitled to seek appropriate relief, such as damages, pursuant to Ohio  
3 Revised Code § 4112.99.  
4

5 47. On or about July 10, 2019, plaintiff suffered violations of Ohio Revised Code  
6 §4112.02(G) in that he was denied access to the facilities as stated herein at FUEL MART gas  
7 station and convenience store and on the basis that he was a person with physical disabilities.

8 48. As a result of the denial of equal access to Defendant's facility due to the acts  
9 and omissions of Defendant in owning, operating and maintaining the subject public facility,  
10 plaintiff suffered violations of his civil rights, as well as suffering from personal injury, shame,  
11 humiliation, embarrassment, frustration, anger, chagrin, disappointment and worry, all of which  
12 are expectedly and naturally associated with a denial of access to a person with physical  
13 disabilities, all to plaintiff's damages as hereinafter stated.  
14

15 49. Plaintiff has been damaged by Defendant's wrongful conduct and seeks the relief  
16 that is afforded by Ohio Revised Code § 4112 for violation of his rights, including statutory  
17 damages according to proof.  
18

19 50. As a result of Defendant's acts and omissions in this regard, plaintiff has been  
20 required to incur legal expenses and hire attorneys in order to enforce his rights and  
21 enforce the provisions of the law protecting access for persons with physical disabilities and  
22 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions  
23 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all  
24 reasonable attorneys' fees and costs incurred if deemed the prevailing party.  
25

26 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

27 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**  
28 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 18

1  
2 51. Plaintiff repleads and incorporate by reference as if fully set forth again herein,  
3 the allegations contained in paragraphs 1 through 50 of this complaint.

4 52. Ohio Administrative Code (hereinafter "O.A.C.") § 4101:1-11 controls the design and  
5 construction of facilities for accessibility for individuals with disabilities.

6 53. Sites, buildings, structures, facilities, elements and spaces, temporary or  
7 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.  
8

9 54. FUEL MART gas station and convenience store, being a site, building, structure,  
10 facility, element or space, committed an unlawful act pursuant to O.A.C. § 1103.1 by failing to  
11 provide an accessible facility to individuals with disabilities due to the barriers to access as  
12 described in this Complaint.  
13

14 55. Defendant's violations denied plaintiff his full enjoyment of its accommodations,  
15 advantages, facilities, or privileges, whereas, plaintiff had great difficulty utilizing the property  
16 due to extensive barriers for patrons confined to wheelchairs.

17 56. As a result of these violations, plaintiff is entitled to compensatory and punitive  
18 damages, and attorney fees and costs, in an amount to be determined at trial, but in any event  
19 not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full  
20 and equal enjoyment of its goods, services, facilities, privileges, and advantages to disabled  
21 persons.  
22

23 57. As a result of Defendant's accessibility violations, plaintiff suffered violations of his  
24 civil rights, as well as suffering from personal injury, shame, humiliation, embarrassment,  
25 frustration, anger, chagrin, disappointment and worry, all of which are expectedly and naturally  
26 associated with a denial of access to a person with physical disabilities, all to plaintiffs' damages  
27 as hereinafter stated.  
28

1           58. Plaintiff has been damaged by Defendant's wrongful conduct and seeks relief  
2 for violation of the O.A.C., including actual and special damages, according to proof.

3           59. As a result of Defendant's acts and omissions in this regard, plaintiff has been  
4 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and  
5 enforce the provisions of the law protecting access for persons with physical disabilities and  
6 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek  
7 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the  
8 prevailing party.  
9

10           Wherefore, plaintiffs pray for relief and damages as hereinafter stated.  
11

12 **O.R.C. 4112.16 NOTICE OF VIOLATION OF ACCESSIBILITY LAW**

13           60. Pursuant to O.R.C. 4112.16 Notice of Violation of Accessibility Law, prior to  
14 filing a civil action alleging violation of State of Ohio accessibility law, the alleged aggrieved  
15 party may notify the owner, agent, or other responsible party, by personal service or by certified  
16 mail, of alleged accessibility law violations.  
17

18           61. On March 28, 2020, NEAL served upon Defendant's statutory agent a Notice of  
19 Violation of Accessibility Law pursuant to O.R.C. 4112.16.

20           62. Defendant's statutory response deadline in which to serve NEAL with its  
21 response was April 17, 2020.  
22

23           63. Defendant failed to serve a response upon NEAL or his counsel within 15 days of  
24 receiving the O.R.C. 4112.16 Notice.

25           64. Due to Defendant's failure to respond in accordance with the statute, NEAL  
26 may commence his lawsuit for violations of State of Ohio accessibility laws.

27           65. Due to Defendant's failure to respond in accordance with the statute, NEAL, if  
28

1 deemed the prevailing party, shall recover reasonable attorney's fees, in addition to any other  
2 remedies available to the plaintiff.

3 Wherefore, Plaintiff SPENCER NEAL prays for relief and damages as hereinafter  
4 stated.  
5

6 **PRAYER:**

7 Wherefore, Plaintiff SPENCER NEAL prays that this court grant relief and damages  
8 as follows:

9 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
10 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
11 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

12 1. For injunctive relief, compelling Defendant to make FUEL MART gas station and  
13 convenience store, readily accessible to and usable by individuals with disabilities; and to make  
14 reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford  
15 full access to the goods, services, facilities, privileges, advantages and accommodations being  
16 offered.  
17

18 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed  
19 the prevailing party; and

20 3. For such other and further relief as the court may deem proper.

21 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
22 **EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, et**  
23 **seq.**

24 4. For injunctive relief, compelling Defendant to make FUEL MART gas station and  
25 convenience store, readily accessible to and usable by individuals with disabilities, per state law.

26 5. General and compensatory damages according to proof;

27 6. All damages for each day, from the inception of the filing of this complaint, on  
28

1 which Defendant have failed to remove barriers which denied plaintiff and other persons with  
2 disabilities full and equal access.

3 7. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed  
4 the prevailing party;  
5

6 8. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

7 9. For all costs of suit;

8 10. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

9 11. Such other and further relief as the court may deem just and proper.  
10

11 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND**  
12 **EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE §**  
**4101:1-11, et seq.**

13 12. For injunctive relief, compelling Defendant to make FUEL MART gas station and  
14 convenience store readily accessible to and usable by individuals with disabilities, per state law.

15 13. General and compensatory damages according to proof;

16 14. All damages for each day, from the inception of the filing of this complaint, on  
17 which Defendant have failed to remove barriers which denied plaintiffs and other persons with  
18 disabilities full and equal access.  
19

20 15. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed  
21 the prevailing party;  
22

23 16. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

24 17. For all costs of suit;

25 18. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

26 19. Such other and further relief as the court may deem just and proper.  
27

28 Respectfully submitted,

1 BLAKEMORE, MEEKER & BOWLER CO., L.P.A.

2 /s/ COLIN G. MEEKER

3 COLIN G. MEEKER (Ohio Bar No. 0092980)

4 495 Portage Lakes Dr.

5 Akron, Ohio 44319

6 Telephone: (330) 253-3337

7 Facsimile: (330) 253-4131

8 cgm@bmblaw.com

9 Attorney for Plaintiff SPENCER NEAL